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Attorneys for plaintiffs United States Senator Jon S. Corzine, individually and in his capacity as
a duly elected member of the United States Senate from the State of New Jersey, et al/s.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON VICINAGE

-----X
UNITED STATES SENATOR :
JON S. CORZINE, individually and :
in his capacity as a duly elected :
member of the United States Senate :
from the State of New Jersey, :
UNITED STATES SENATOR FRANK :
R. LAUTENBERG, individually and :
in his capacity as a duly elected :
member of the United States Senate :
from the State of New Jersey; :
CONGRESSMAN RUSH HOLT, :
individually and in his capacity as a :
duly elected member of the United :
States House of Representatives :
from the 12th Congressional District :
of the State of New Jersey; :
CONGRESSMAN FRANK PALLONE, :
individually and in his capacity as a :

Civil Action No. _____

VERIFIED COMPLAINT

duly elected member of the United
States House of Representatives
from the 6th Congressional District
of the State of New Jersey;
CONGRESSMAN CHRISTOPHER
SMITH, individually and
in his capacity as a duly
elected member of the United States
House of Representatives of from
the 4th Congressional District
of the State of New Jersey;
GERALD TARANTOLO, individually
and in his capacity as Mayor of the
Borough of Eatontown, New Jersey;
MARIA GATTA, individually and in
her capacity as Mayor of the
Borough of Oceanport, New Jersey;
SUZANNE CASTLEMAN, individually
and in her capacity as Mayor of the
Borough of Little Silver, New
Jersey; CHARLES WOWKANECH,
individually and in his capacity as
President, New Jersey State
AFL-CIO; JOHN R. POITRAS,
individually and in his capacity as
President of the American
Federation of Government
Employees - Local 1904; KATHLEEN
BACKER, individually; SARGENT
FIRST CLASS LOUIS ORROVO,
individually; SHEILAH KELLY,
individually; ROBERT GIORDANO,
individually and as a Member of the
Patriot's Alliance, Inc.; S. THOMAS
GAGLIANO, ESQ., individually and
in his capacity as Co-Chair of the
Patriot's Alliance, Inc.; and Frank
C. Muzzi, individually and in his
capacity as Co-Chair of the
Patriot's Alliance,

Plaintiffs,

v.

DEFENSE BASE CLOSURE AND :
REALIGNMENT COMMISSION ("2005 :
BRAC Commission"), a commission :
of the United States of America :
created and governed by an :
Act of Congress; ANTHONY :
J. PRINCIPI in his :
official capacity as :
Chairman of the 2005 BRAC :
Commission; JAMES BILBRAY :
in his official capacity :
as a member of the 2005 :
BRAC Commission; PHILIP :
COYLE in his official :
capacity as a member of :
the 2005 BRAC Commission; :
ADMIRAL HAROLD W. GEHMAN, :
JR., (USN, Ret.) in his :
official capacity as a :
member of the 2005 BRAC :
Commission; JAMES V. :
HANSEN in his official :
capacity as a member of :
the 2005 BRAC Commission; :
GENERAL JAMES T. HILL :
(USA, Ret.) in his :
official capacity as a :
member of the 2005 BRAC :
Commission; GENERAL LLOYD :
W. NEWTON (USAF, Ret.) in :
his official capacity as a :
member of the 2005 BRAC :
Commission; SAMUEL K. :
SKINNER in his official :
capacity as a member of :
the 2005 BRAC Commission; :
BRIGADIER GENERAL SUE :
E. TURNER (USAF, Ret.) in :
her official capacity as :
a member of the 2005 BRAC :
Commission; and DONALD :
RUMSFELD in his official capacity :

as the Secretary of Defense of
the United States of
America,

Defendants.

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X

Plaintiffs, through their undersigned attorneys, by way of Verified Complaint
against these named defendants state as follows:

JURISDICTION AND VENUE:

1. Jurisdiction is conferred on the Federal District Court to entertain plaintiffs' federal question claims pursuant to 28 U.S.C. sec. 1331, 28 U.S.C. sec. 1361 as well as 28 U.S.C. sec. 2201(a) and 28 U.S.C. sec. 2202 (the federal "declaratory judgment act").
2. Venue is proper pursuant to 28 U.S.C. sec. 1391(e).

THE PARTIES:

A. PLAINTIFFS:

- 3(a). Plaintiff United States Senator Jon S. Corzine brings this action individually and in his capacity as a duly elected member of the United States Senate from the State of New Jersey. Plaintiff Corzine's primary office is located in Essex County. Plaintiff Corzine has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the

collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that the President has publically stated that he will not in any way seek to revise the 2005 BRAC defendants final recommendations under any circumstances. As such, the recommendations will in all certainty be transmitted from the President to congress under section 2908 of the BRAC Act for a joint resolution for en mass approval or rejection in their entirety in the exact same form as the final recommendations of the BRAC defendants. Due to the en mass approval process, without this Court's intervention, which is manifestly appropriate and constitutionally required on request, plaintiff Corzine will be placed in the position of having to approve or disapprove a closure and realignment list that was created in violation of federal law, something the 2005 BRAC Act expressly attempts to prevent.

3(b). Plaintiff United States Senator Frank R. Lautenberg brings this action individually and in his capacity as a duly elected member of the United States Senate from the State of New Jersey. Plaintiff Lautenberg's primary office is located in Essex County. Plaintiff Lautenberg's primary office is located in Essex County. Plaintiff Lautenberg has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that the President has publically stated that he will not in any way seek to revise the 2005 BRAC

defendants final recommendations under any circumstances. As such, the recommendations will in all certainty be transmitted from the President to congress under section 2908 of the BRAC Act for a joint resolution for en mass approval or rejection in their entirety in the exact same form as the final recommendations of the BRAC defendants. Due to the en mass approval process, without this Court's intervention, which is manifestly appropriate and constitutionally required on request, plaintiff Lautenberg will be placed in the position of having to approve or disapprove a closure and realignment list that was created in violation of federal law, something the 2005 BRAC Act expressly attempts to prevent.

- 3(c) Plaintiff Congressman Rush Holt brings this action individually and in his capacity as a duly elected member of the United States House of Representatives from the 12th Congressional District. Fort Monmouth is located in plaintiff Holt's congressional district. Plaintiff Holt has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that the President has publically stated that he will not in any way seek to revise the 2005 BRAC defendants final recommendations under any circumstances. As such, the recommendations will in all certainty be transmitted from the President to congress under section 2908 of the BRAC

Act for a joint resolution for en mass approval or rejection in their entirety in the exact same form as the final recommendations of the BRAC defendants. Due to the en mass approval process, without this Court's intervention, which is manifestly appropriate and constitutionally required on request, plaintiff Holt will be placed in the position of having to approve or disapprove a closure and realignment list that was created in violation of federal law, something the 2005 BRAC Act expressly attempts to prevent.

- 3(d) Plaintiff Congressman Frank Pallone brings this action individually and in his capacity as a duly elected member of the United States House of Representatives of from the 6th Congressional District. Plaintiff Pallone's congressional district is located in Monmouth County. Plaintiff Pallone has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that the President has publically stated that he will not in any way seek to revise the 2005 BRAC defendants final recommendations under any circumstances. As such, the recommendations will in all certainty be transmitted from the President to congress under section 2908 of the BRAC Act for a joint resolution for en mass approval or rejection in their entirety in the exact same form as the final recommendations of the BRAC defendants. Due to the en mass approval process, without this Court's intervention, which

is manifestly appropriate and constitutionally required on request, plaintiff Pallone will be placed in the position of having to approve or disapprove a closure and realignment list that was created in violation of federal law, something the 2005 BRAC Act expressly attempts to prevent.

- 3(e) Plaintiff Congressman Christopher Smith brings this action individually and in his capacity as a duly elected member of the United States House of Representatives of from the 4th Congressional District. Plaintiff Smith's congressional district covers part of Monmouth County. Plaintiff Smith has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that the President has publically stated that he will not in any way seek to revise the 2005 BRAC defendants final recommendations under any circumstances. As such, the recommendations will in all certainty be transmitted from the President to congress under section 2908 of the BRAC Act for a joint resolution for en mass approval or rejection in their entirety in the exact same form as the final recommendations of the BRAC defendants. Due to the en mass approval process, without this Court's intervention, which is manifestly appropriate and constitutionally required on request, plaintiff Smith will be placed in the position of having to approve or disapprove a

closure and realignment list that was created in violation of federal law, something the 2005 BRAC Act expressly attempts to prevent.

- 3(f) Plaintiff Gerald Tarantolo brings this action individually and in his capacity as Mayor of the Borough of Eatontown, New Jersey. Plaintiff Tarantolo has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that this plaintiff and his constituents will be subject to the post base closing procedures as outlined in the BRAC Act when, had the defendants not violated federal law, this plaintiff and his constituents would not otherwise be subject to such statutory procedures. Plaintiff Tarantolo hereby seeks to assert such claims on behalf of constituents under Article III of the United States Constitution by virtue of the third party standing doctrine.
- 3(g) Plaintiff Maria Gatta brings this action individually and in her capacity as Mayor of the Borough of Oceanport, New Jersey. Plaintiff Gatta has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that this plaintiff and her constituents will be subject to the post base closing procedures as outlined in the BRAC Act when, had the defendants not violated

federal law, this plaintiff and her constituents would not otherwise be subject to such statutory procedures. Plaintiff Gatta hereby seeks to assert such claims on behalf of constituents under Article III of the United States Constitution by virtue of the third party standing doctrine.

- 3(h) Plaintiff Suzanne Castleman brings this action individually and in her capacity as Mayor of the Borough of Little Silver, New Jersey. Plaintiff Castleman has suffered distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that this plaintiff and her constituents will be subject to the post base closing procedures as outlined in the BRAC Act when, had the defendants not violated federal law, this plaintiff and her constituents would not otherwise be subject to such statutory procedures. Plaintiff Castleman hereby seeks to assert such claims on behalf of constituents under Article III of the United States Constitution by virtue of the third party standing doctrine.

- 3(i) Plaintiff Charles Wowkanech brings this action in his capacity as President, New Jersey State AFL-CIO and on behalf of all of the workers affiliated with his organization that have or will suffer ascertainable by way of loss of employment and loss of other non-DOD federal services as the result of the closure of Fort Monmouth which closure, if it ultimately occurs, will be in

violation of federal law. Plaintiff Wowkanech hereby seeks to assert such claims on behalf of union members under Article III of the United States Constitution by virtue of the third party standing doctrine.

3(j) Plaintiff John R. Poitras, individually and in his capacity as President of the American Federation of Government Employees - Local 1904, brings this action on behalf of all of the workers affiliated with his organization that have or will suffer ascertainable by way of loss of employment an loss of other non-DOD federal services as the result of the closure of Fort Monmouth which closure, if it ultimately occurs, will be in violation of federal law. Plaintiff Poitras hereby seeks to assert such claims on behalf of union members under Article III of the United States Constitution by virtue of the third party standing doctrine.

3(k) Kathleen Backer, individually, resides in the State of New Jersey and has a natural son who is on active duty as a Second Lt. serving in the War in Iraq. Plaintiff Backer's son is in harms way and closure of Fort Monmouth in violation of the BRAC Act will in fact endanger Backer's natural son and others in violation of federal law creating distinct and palpable injuries within the meaning of Article III of the United States Constitution . The closure recommendation is in violation of federal law in that there are no procedures in this conditional closure to ensure that the essential services that the war-fighter in the battlefield, such as Barker's son, receive from Fort Monmouth will continue without interruption as the BRAC Act actually otherwise contemplates

and indeed requires. Unnecessary and unreasonable risks of danger to the war-fighter in the battlefield are prevented when there is a proper application of the BRAC Act.

- 3(l) Sgt. First Class Louis Orroyo brings this action individually. Plaintiff Orroyo has suffered or will suffer distinct and palpable injuries within the meaning of Article III of the United States Constitution as a direct result of the collective defendants violating federal law. Such distinct and palpable injuries include, but are not limited to, the fact that Plaintiff Orroyo is on active duty in the Army reserves and needs and routinely uses the Patterson Army Medical Clinic located on Fort Monmouth for his medical needs and enjoys the protections of the Federal Emergency Management Agency located on Fort Monmouth.
- 3(m) Sheilah Kelly brings this action individually. Plaintiff Kelly is lawfully married to her husband, Sargent First Class William Kelly, who is Active Army Guard and reserve and who at present is serving a 2nd tour of duty in Iraq. Plaintiff Backer's husband is in harms way and closure of Fort Monmouth in violation of the BRAC Act will in fact endanger Kelly's husband and others in violation of federal law creating distinct and palpable injuries within the meaning of Article III of the United States Constitution. The closure recommendation is in violation of federal law in that there are no procedures in this conditional closure to ensure that the essential services that the war-fighter in the battlefield, such as Barker's son, receive from Fort Monmouth will continue without interruption as the BRAC Act actually otherwise contemplates and

indeed requires. Unnecessary and unreasonable risks of danger to the warfighter in the battlefield are prevented when there is a proper application of the BRAC Act.

- 3(n) Robert Giordano brings this action in both an individual capacity and in his capacity as a Member of the Patriot's Alliance, Inc. Plaintiff Giordano, individually, and other military, professional and civilian employees have or will suffer an ascertainable loss by way of loss of employment an loss of other non-DOD federal services as the result of the closure of Fort Monmouth which closure, if it ultimately occurs, will be in violation of federal law. Plaintiff Giordano, individually, asserts Article III standing and further assert claims on behalf of Patriot Alliance, Inc. members similarly situated under Article III of the United States Constitution by virtue of the third party standing doctrine.
- 3(o) S. Thomas Gagliano, Esq. brings this action individually and in his capacity as Co-Chair of the Patriot's Alliance, Inc. Plaintiff Gagliano, individually, and other military, professional and civilian employees have or will suffer an ascertainable loss by way of loss of employment an loss of other non-DOD federal services as the result of the closure of Fort Monmouth which closure, if it ultimately occurs, will be in violation of federal law. Plaintiff Gagliano, individually, asserts Article III standing and further assert claims on behalf of similarly situated individual that are members of the Patriot Alliance, Inc. under Article III of the United States Constitution by virtue of the third party standing doctrine.

- 3(p) Frank C. Muzzi brings this action individually and in his capacity as Co-Chair a of the Patriot's Alliance, Inc. Plaintiff Muzzi, individually, and other military, professional and civilian employees have or will suffer an ascertainable loss by way of loss of employment and loss of other non-DOD federal services as the result of the closure of Fort Monmouth which closure, if it ultimately occurs, will be in violation of federal law. Plaintiff Gagliano, individually, asserts Article III standing and further assert claims on behalf of other similarly situated individual that are members of the Patriot Alliance, Inc. under Article III of the United States Constitution by virtue of the third party standing doctrine.

B. DEFENDANTS:

4. Defendant "2005 Defense Base Closure and Realignment Commission ("2005 BRAC Commission") is a commission of the United States created and governed by an Act of Congress, specifically the 2005 BRAC Act. The 2005 BRAC Commission is charged with transmitting a final report on the Commission's findings, conclusions, "changes" and recommendations on base closure and realignment to the President of the United States on or before September 8, 2005. See 2005 BRAC Act at sec. 2914(d)(1).
5. Defendants Anthony Principi, James Bilbray, Phillip Coyle, Admiral Harold W. Gehman, Jr., (USN, Ret.), James V. Hansen, General James T. Hill (USA, Ret.), General Lloyd W. Newton (USAF, Ret.), Samuel K. Skinner and Brigadier General Sue E. Turner (USAF, Ret.) were all appointed by the

President of the United States, with the advice and consent of the Senate, as members of the 2005 BRAC Commission under procedures outlined in the 2005 BRAC Act. In the 2005 BRAC Act congress has granted to the Commission a conditional delegation of authority to review the initial recommendations of Secretary Rumsfeld on a list of military bases recommended for closure and realignment and to make their own findings, conclusions, "changes" and recommendations in a report to the President.

6. Defendant Donald Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States of America as defined in 10 U.S.C. sec. 113, and has the powers and duties as set forth in Title 10 of the United States Code. Pursuant to a conditional delegation of power from congress in the 2005 BRAC Act, Secretary Rumsfeld is required to, pursuant to detailed statutory guidelines, objectively review military bases under the statutory guidelines, for purposes of recommending in the first instance a list of bases for closure or realignment. At all times herein Secretary Rumsfeld was acting in his official capacity.

STATEMENT OF FACTS:

7. In January of 2005 congress enacted the 2005 BRAC Act.
8. Unlike predecessor statutes, the 2005 BRAC Act contained for the first time specific statutorily enumerated criteria that congress required to be followed by Secretary Rumsfeld in the first instance when the Secretary was preparing his 2005 recommendations for realignment and closure of military bases, and to be followed in the second instance by the 2005 BRAC Commission when reviewing the initial recommendations of Secretary Rumsfeld.
9. Fort Monmouth, New Jersey, is a 1,344 acre United States Military Base located within the boundaries of several municipalities in Monmouth County in the State of New Jersey, including but not limited to the Boroughs of Eatontown, Oceanport and Little Silver. Fort Monmouth is the United States Army Center for the Joint Services critical communications, command and control, intelligence, surveillance, and reconnaissance (C4ISR) equipments and capabilities. C4ISR is technically complex and vital for the army and is the "glue" that integrates our joint forces and supports the war fighter on today's modern battlefield. In time of war such as now when the men and women in the United States Military are actively in harms way, the services provided by Fort Monmouth are vital. Pursuant to his responsibilities under the 2005 BRAC Act, Secretary Rumsfeld in fact prepared recommendations in the first instance for military base closures and realignments and transmitted them to

the Commission for action in May of 2005, such recommendations including a recommendation to close Fort Monmouth.

10. After receipt of Secretary Rumsfeld's initial recommendations certain named party plaintiffs conducted a cursory review of the recommendations in consort with the Congressionally mandated criteria and concluded that the Secretary had in no way followed the statute and in fact violated federal law when he unjustifiably placed Fort Monmouth, New Jersey on the BRAC closure list in the first instance. Stated what more simply, Fort Monmouth was added to the Secretary of Defense's recommendations in violation of Federal Law, specifically 2005 BRAC Act sections 2912, 2913 & 2914.
11. As Fort Monmouth, New Jersey was on the BRAC Closure List in the first instance in violation of Federal Law, defendants Anthony Principi, James Bilbray, Phillip Coyle, Admiral Harold W. Gehman, Jr., (USN, Ret.), James V. Hansen, General James T. Hill (USA, Ret.), General Lloyd W. Newton (USAF, Ret.), Samuel K. Skinner and Brigadier General Sue E. Turner (USAF, Ret.) had no lawful authority to independently evaluate Fort Monmouth for retention on the base list for closure and rather were required by law to remove Fort Monmouth from the base closure list.

12. Notwithstanding the above prepared three volumes two comprehensive documents entitled "Community Rebuttal to the 2005 BRAC Recommendation to: Close Fort Monmouth and Its Fort Belvoir Elements and Re-create a Land C4ISR Center" (dated July 8, 2005, revised July 14, 2005),. The sum and substance of the documents operates to confirmed in detail that Secretary Rumsfeld failed to meet his obligation under the 2005 BRAC Act, a necessary pre-condition to met before he could lawfully add a base to the closure list.
13. At a public hearing at Goucher College in Maryland, provided copies of the referenced document to defendants Anthony Principi, James Bilbray, Phillip Coyle, Admiral Harold W. Gehman, Jr., (USN, Ret.), James V. Hansen, General James T. Hill (USA, Ret.), General Lloyd W. Newton (USAF, Ret.), Samuel K. Skinner and Brigadier General Sue E. Turner (USAF, Ret.) and made a comprehensive presentation lasting several hours which presentation confirmed Secretary Rumsfeld's failure to follow federal law when adding Fort Monmouth to the closure list in the first instance.
14. On August of 2005, defendants Anthony Principi, James Bilbray, Phillip Coyle, Admiral Harold W. Gehman, Jr., (USN, Ret.), James V. Hansen, General James T. Hill (USA, Ret.), General Lloyd W. Newton (USAF, Ret.), Samuel K. Skinner and Brigadier General Sue E. Turner (USAF, Ret.) met to

publically consider the issue of Fort Monmouth and other bases recommended by Secretary Rumsfeld for closure. At this time said defendants had no lawful authority to even consider the issue of leaving Fort Monmouth on the list as Fort Monmouth was on the list in violation of federal law in the first instance.

15. Notwithstanding their lack of authority to act, defendant BRAC Commission and defendants Anthony Principi, James Bilbray, Phillip Coyle, Admiral Harold W. Gehman, Jr., (USN, Ret.), James V. Hansen, General James T. Hill (USA, Ret.), General Lloyd W. Newton (USAF, Ret.), Samuel K. Skinner and Brigadier General Sue E. Turner (USAF, Ret.) voted on two resolutions pertaining to Fort Monmouth. The first resolution, to leave Fort Monmouth open, failed and the second resolution, to close Fort Monmouth passed.

16. In the second resolution, the commission stated as follows:

- that the Commission find that when the Secretary of Defense made Army recommendation 11, Fort Monmouth, New Jersey, he substantially deviated from Final Selection Criteria 1,2,3,4,5 and 7 and the Force Structure Plan;
- that the Commission add to the recommendation the language "The Secretary may only proceed with the movement of activities from Fort Monmouth to Aberdeen Proving Ground after putting in place safeguards that will ensure that no ongoing program will be moved until redundant capability is established, or other mitigating factors are in place to ensure that no degradation of the program or its support to the Global War On Terror or any other military contingency operation will maximize the

retention of critical workforce personnel before, during and after any such move.", and;
-that the Commission find this change and the recommendation as amended are consistent with the Final Selection Criteria and Force Structure Plan.

17. Several days later, an amendment was passed amending the condition as follows:

- that the Commission add to the recommendation the language "The Secretary may only proceed with the movement of activities from Fort Monmouth to Aberdeen Proving Ground after the Secretary has submitted a report to the appropriate congressional oversight committee providing that he has put in place safeguards that will ensure that no ongoing program will be moved until redundant capability is established, or other mitigating factors are in place to ensure that no degradation of the program or its support to the Global War On Terror or any other military contingency operation will maximize the retention of critical workforce personnel before, during and after any such move."

18. As the BRAC defendants have not yet filed their final report and recommendation with the President of the United States plaintiffs have timely filed this challenge to the actions of the defendants being in violation of federal law.

FIRST CAUSE OF ACTION:
(As to BRAC defendants only)

19. The BRAC defendants exceeded the scope of their statutorily delegated conditional authority to ... "make changes" in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria ..." within the meaning of sec. 2914(d)(1) of the 2005 BRAC Act and sec. 2903(d) of the 1990 BRAC Act (as amended) when, in passing the operative resolutions to making such changes, the BRAC defendants found as fact in the second Fort Monmouth Resolution that the Secretary "... substantially deviated from Final Criteria 1,2,3,4, 5 and 7 and the Force-Structure Plan ..." and added a "change" that requiring that ... "It the Secretary may only proceed with the movement of activities from Fort Monmouth to Aberdeen Proving Ground after putting in place safeguards that will ensure that no ongoing program will be moved until redundant capability is established, or other mitigating factors are in place to ensure that the no degradation of the program or its support to the Global War On Terror or any other military contingency operation will occur as a result of the movement of the program. Further, the Secretary must also put into place programs to maximize retention of critical workforce personnel before, during and after any such move..." because such "change" creates a conditional closing neither authorized nor contemplated by the BRAC Act.

SECOND CAUSE OF ACTION:
(As to BRAC defendants only)

20. The BRAC defendants exceeded the scope of their statutorily delegated conditional authority to ... "**make changes** in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria ..." as delegated in sec. 2914(d)(1) of the 2005 BRAC Act and sec. 2903(d) of the 1990 BRAC Act (as amended) when, in passing the operative resolutions to making such changes, the BRAC defendants, in passing the third resolution by amending the conditional closing approved in the second resolution now adding the additional requirement that "[t]he Secretary may only proceed with the movement of activities from Fort Monmouth to Aberdeen Proving Ground **after the Secretary has submitted a report to the appropriate congressional oversight committee providing that he has put in** place safeguards that will ensure that no ongoing program will be moved until redundant capability is established, or other mitigating factors are in place to ensure that the no degradation of the program or its support to the Global War On Terror or any other military contingency operation will occur as a result of the movement of the program. The Secretary must also put into place programs to maximize retention of critical workforce personnel before, during and after any such move..." , the BRAC defendants violated federal law because in making such a "change", the BRAC defendants have exceeded their statutory authority with

the inclusion of the mandatory condition of congressional oversight and monitoring of the closure decision in a manner that is neither contemplated nor authorized by the BRAC Act.

THIRD CAUSE OF ACTION:
(As to BRAC defendants only)

21. The BRAC defendants exceeded the scope of their statutorily delegated conditional authority to ... "make changes" in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria ..." as delegated in sec. 2914(d)(1) of the 2005 BRAC Act and sec. 2903(d) of the 1990 BRAC Act (as amended) when, in passing the operative resolutions to making such changes the BRAC defendants violated federal law and exceeded their congressionally delegated authority when they found as fact in the second Fort Monmouth Resolution that the Secretary "... substantially deviated from Final Criteria 1,2,3,4, 5 and 7 and the Force-Structure Plan ..." and did not recommend removal from the closure list. Though the statute authorizes the BRAC defendants to make "changes" when they find a "substantial deviation" by the Secretary from the Force Structure Plan and the Criteria, in the highly unique situation such as here where the BRAC Commission finds that what the Secretary has recommended would constitute a wholesale deviation from the Plan and Criteria and otherwise noncompliance by the Secretary with the

statutory mandate, that the BRAC Statute does not contemplate a "curative change" that is de facto an entirely new recommendation but rather limits the BRAC defendants to the sole curative remedy of removal from the closure list.

FOURTH CAUSE OF ACTION:
(AS TO BRAC DEFENDANTS)

22. Assuming, arguendo, that the BRAC defendants did not exceeded the scope of their congressionally delegated conditional authority to ... "make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria ..." as delegated in sec. 2914(d)(1) of the 2005 BRAC Act and sec. 2903(d) of the 1990 BRAC Act (as amended) in the procedural manner that they made "change", the BRAC defendants have violated federal law because the changes recommended do not adequately address and substantively cure the statutory deficiencies of the Secretary in the first instance as is otherwise required by the 2005 BRAC Act.

FIFTH CAUSE OF ACTION:
(As to Defendant Secretary Rumsfeld)

23. Defendant Donald Rumsfeld while acting in his official capacity as the Secretary of Defense of the United States of America and exercising the

conditional authority delegated to him by congress in the 2005 BRAC Act to make recommendations in the first instance of military bases for inclusion on the Department of Defense 2005 BRAC closure and realignment list, violated federal law, specifically 2005 BRAC Act sections 2912, 2913 & 2914, when he recommended for inclusion and thereafter included Fort Monmouth, New Jersey on the 2005 BRAC base closure list. When the Secretary made the recommendation to include Fort Monmouth on the list in the first instance the Secretary in fact substantially deviated from the Force-Structure Plan and failed to assess statutorily mandated Criteria 1,2,3,4,5 & 7 as demonstrated by (a) the written "Community Rebuttal" and (b) the initial findings of fact on the issue of statutory compliance with the Force-Structure Plan and Criteria as found in the second and third resolutions passed by the BRAC Defendants. Therefore, since Fort Monmouth was never lawfully on the closure list in the first instance the BRAC defendants had no lawful power to exercise any statutorily delegated power to consider Fort Monmouth for closure.

SIXTH CAUSE OF ACTION:

(As to defendant Secretary Rumsfeld)

24. Defendant Donald Rumsfeld, while acting in his official capacity as the Secretary of Defense of the United States of America and exercising the conditional authority delegated to him by congress in the 2005 BRAC Act to

make recommendations in the first instance of military bases for inclusion on the Department of Defense 2005 BRAC closure and realignment list, violated federal law because the Secretary failed to consider the mandatory statutory requirement in sec. 2913(e) that he consider the costs that will be incurred by other non-Department of Defense Federal entities located on Fort Monmouth that will be impacted by any closure or realignment. In the Case of Fort Monmouth those Federal entities that will be impacted by the closure that were clearly not considered by the Secretary, in direct violation of the statutory mandate, were the Veterans Administration which operates Patterson Army Health Clinic, the Federal Emergency Management Agency which operates from a location at Fort Monmouth, and the Federal Bureau of Investigations which also operates from a location at Fort Monmouth. Therefore, since Fort Monmouth was never lawfully on the closure list in the first instance the BRAC defendants had no lawful authority to exercise any statutorily delegated authority to consider Fort Monmouth for closure.

REQUEST FOR RELIEF:

WHEREFORE, the collective plaintiffs respectfully request that the Court grant the following forms of relief against the collective defendants:

- A.) Upon the filing of the Verified Complaint, a Temporary Restraining Order pursuant to F.R.Civ.P. 65(a) temporarily restraining and enjoining defendants 2005 BRAC Commission, BRAC Commission Chairman Princepi and BRAC Commission Members Bilbray, Coyle, Gehman, Hansen, Hill, Newton, Skinner and Turner from transmitting the 2005 BRAC Commission's final report, containing its findings and conclusions based upon a review and analysis of the Secretary of Defense's initial recommendations, to the President of the United States until September 8, 2005;
- B.) Upon the filing of the Verified Complaint, an Order pursuant to F.R.Civ.P. 65(a) fixing a hearing date for plaintiffs' request for a Preliminary Injunction, such hearing to take place on or before September 8, 2005;
- C.) Upon the filing of the Verified Complaint, an Order pursuant to F.R.Civ.P. 65(a)(2) ordering that the trial on the merits of plaintiffs' claims and request for a permanent injunction be expedited and advanced and consolidated with the

hearing on plaintiffs' request for a Preliminary Injunction, such hearing and trial to take place on or before September 8, 2005;

- D.) Upon the filing of the Verified Complaint, an Order granting plaintiffs leave to conduct and demand specifically identified limited expedited discovery from defendant 2005 BRAC Commission without further formal demand for production;
- E.) Upon the filing of the Verified Complaint, an Order specifically directing defendant 2005 BRAC Commission to provide directly to plaintiffs' counsel at least one day before the date fixed for the final hearing copies of any and all information ... "used by the Commission in making its recommendations ..." within the contemplation of section 2914(d)(2) of the 2005 BRAC Act;
- F.) After hearing, a declaration pursuant to 28 U.S.C. sec. 2201(a) and 28 U.S.C. sec. 2202 (the federal "declaratory judgment act") that defendants 2005 BRAC Commission, BRAC Commission Chairman Princepi and BRAC Commission Members Bilbray, Coyle, Gehman, Hansen, Hill, Newton, Skinner and Turner violated federal law when they failed to remove Fort Monmouth from the closure list at the onset of their review process and/or at the conclusion of their

review process and/or in the manner that "changes" were made to the Secretary's original recommendations;

- G.) After hearing, a declaration pursuant to 28 U.S.C. sec. 2201(a) and 28 U.S.C. sec. 2202 (the federal "declaratory judgment act") that defendant Rumsfeld has violated Federal Law, specifically sec. 2913 and sec. 2914 of the 2005 BRAC Act, in his inclusion of Fort Monmouth in the first instance on the initial Department of Defense list of military bases recommended for closure which recommendation was thereafter forwarded to defendant 2005 Brac Commission for review;
- H.) After hearing, an Order directing defendants 2005 BRAC Commission, BRAC Commission Chairman Princepi and BRAC Commission Members Bilbray, Coyle, Gehman, Hansen, Hill, Newton, Skinner and Turner to follow federal law and permanently restraining and enjoining said defendants from including Fort Monmouth on the closure or realignment list as contained in the 2005 BRAC Commission final report and recommendations sent to the President;
- I.) An Order, after hearing, awarding costs of suit; and

J.) An Order entering such other further relief as the court deems fair, just and equitable.

DATED:

FRANK CAPECE, ESQ. (#FC4482)
ATTORNEY FOR PLAINTIFFS

8/10

DATED:

EUGENE M. LaVERGNE, ESQ. (#EL3331)
ATTORNEY FOR PLAINTIFFS

8/10

CERTIFICATION:

We the undersigned hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding except as follows:

The continuation of the 2005 BRAC process under the 2005 BRAC Act.

I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE KNOWINGLY FALSE I MAY BE SUBJECT TO PUNISHMENT.

DATED:

**FRANK CAPECE, ESQ. (#FC4482)
ATTORNEY FOR PLAINTIFFS**

DATED:

**EUGENE M. LaVERGNE, ESQ. (#EL3331)
ATTORNEY FOR PLAINTIFFS**

VERIFICATION:

I, S. Thomas Gagliano, Esq., a named plaintiff in the above matter, have read the foregoing Verified Complaint. Based upon my personal knowledge, I hereby certify that the factual statements set forth in this Verified Complaint are true and accurate. SEG

I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE KNOWINGLY FALSE I MAY BE SUBJECT TO PUNISHMENT.

DATED:


S. THOMAS GAGLIANO, ESQ.

VERIFICATION:

I, Frank C. Muzzi, a named plaintiff in the above matter, have read the foregoing Verified Complaint. Based upon my personal knowledge, I hereby certify that the factual statements set forth in this Verified Complaint are true and accurate.

I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE KNOWINGLY FALSE I MAY BE SUBJECT TO PUNISHMENT.

DATED:


FRANK C. MUZZI